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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,643	03/20/2002	Richard Fayer-Hosken	235.00300101	1109
26813	7590	04/13/2006		EXAMINER
MUETING, RAASCH & GEBHARDT, P.A. P.O. BOX 581415 MINNEAPOLIS, MN 55458				NOLAN, PATRICK J
			ART UNIT	PAPER NUMBER
			1644	

DATE MAILED: 04/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/019,643	FAYRER-HOSKEN ET AL.	
	<b>Examiner</b>	Art Unit	
	Patrick J. Nolan	1644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

**WHEN REPLY IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION:**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 14 March 2006.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 4,6,12-15,17-19,21,23,27-29 and 41-47 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 4,6,12-15,17-19,21,23,27-29 and 42-47 is/are rejected.

7)  Claim(s) 41 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date .

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_.

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1. Claims 4, 6, 12-15, 17-19, 21, 23, 27-29 and 41-47 are pending.
2. Applicant's after-final submitted 3-14-06 has been entered. The Finality of the last Office Action is hereby removed. New grounds of rejection are set forth below in a Non-Final Office Action.
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 4, 6, 12-15, 17-18, 21, 23, 27-29, 42 and 44-47 rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,656,488 (reference found in IDS of 2-14-03).

The '488 patent teaches the reducing or preventing of fertilization of eggs in birds by using a glycoprotein, zp3 from pigs (porcine). Wherein said zp3 glycoprotein is naturally occurring, recombinantly made and administered with or without carriers (avirulent microbes) that are dually functional (both as carriers and as immunogens) and with or without adjuvants, such as aluminum hydroxide. It is noted that claim 44 is included as carriers (avirulent microbes) that induce humoral immune responses include B cell epitopes.

The claimed invention is anticipated by the prior art teachings.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 4, 17-19 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,656,488 in view of US Patent 5,686,292.

The '488 patent has been discussed supra.

The claimed invention differs from the prior art teachings by the recitation of using adjuvant STDCM.

However, the '292 patent teaches MPL-STDCM is a known adjuvant useful to induce an immune response.

Therefore it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to be motivated to substitute the aluminum hydroxide adjuvant taught by the '488 patent with another well recognized adjuvant MPL-STDCM, since both are known to be useful to induce immune responses to antigens.

7. It is noted claim 41 is objected as being dependent upon a rejected claim.

8. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick Nolan whose telephone number is 571-272-0847.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Christina Chan, can be reached at 571-272-0841.



Patrick J. Nolan, Ph.D.

Primary Examiner, Group 1640

April 12th, 2006